

MEMORANDUM TO: Faryar Shirzad
Assistant Secretary
for Import Administration

FROM: Bernard T. Carreau
Deputy Assistant Secretary
for AD/CVD Enforcement II

SUBJECT: Issues and Decision Memorandum for the Final Determination of
the Antidumping Duty Investigation: Carbon and Certain Alloy
Steel Wire Rod from Mexico

Summary

We have analyzed the case briefs and rebuttal briefs of interested parties for the final determination of this antidumping duty investigation covering carbon and certain alloy steel wire rod (steel wire rod) from Mexico. Comments were received from the petitioners and the respondent. We recommend that you approve the positions we have developed in the **Department Position** sections of this memorandum.

Background

On April 10, 2002, the Department of Commerce (the Department) published the preliminary determination of the antidumping duty investigation of steel wire rod from Mexico. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Mexico*, 67 FR 17397 (April 10, 2002) (*Preliminary Determination*). The respondent in this case is Siderurgica Lazaro Cardenas Las Truchas, S.A. de C.V. (SICARTSA), along with its affiliates, CCC Steel GmbH (CCC Steel) and Coutinho Caro + Co. USA Inc. (CCC USA). We verified the information submitted on the record by the respondent, and issued verification reports on June 13, 2002, and June 19, 2002. On July 10 and 17, 2002, we received case briefs and rebuttal briefs, respectively, from the petitioners¹ and the respondent. The period of investigation (POI) is July 1, 2000, through June 30, 2001.

¹ The petitioners in this investigation are Co-Steel Raritan, Inc., GS Industries, Keystone Consolidated Industries, Inc., and North Star Steel Texas, Inc. (collectively, the petitioners).

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DISCUSSION OF ISSUES**I. ISSUES SPECIFIC TO SALES:****Comment 1: Constructed Export Price****Comment 1a: SICARTSA's U.S. Sales Through CCC Steel and CCC USA**

The petitioners assert that all of SICARTSA's U.S. sales – those through CCC Steel as well as its “direct” sales – should be treated as constructed export price (CEP) sales. According to the petitioners, the Department's verification established that CCC USA was actively and intensively involved in the process of selling to the United States. The petitioners claim that the U.S. Court of Appeals for the Federal Circuit (CAFC) in *AK Steel v. United States*, 226 F.3d 1361 (Fed. Cir. 2000) (*AK Steel*) made clear the distinction between EP and CEP sales. Specifically, the petitioners claim that “the level of activity requires the Department to treat all sales made through CCC USA as having been made in the United States,” and, as such, should be considered CEP sales. The petitioners state that the CAFC concluded that “where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated” distinguishes CEP

sales from EP sales.²

In applying the facts of the instant investigation to the distinction put forth by *AK Steel*, the petitioners argue that CCC USA is simply the U.S. agent for CCC Steel in Germany, performing the role of selling agent for CCC Steel's "America Desk." According to the petitioners, any distinction between CCC USA and CCC Steel is meaningless, as any acts of CCC USA must be attributed to its principal, CCC Steel.

As evidence of the role played by CCC USA, the petitioners argue that the Department's verification established that CCC USA normally negotiates the sales details with U.S. customers, and that even where CCC Steel determines that changes to a contract are necessary, it is CCC USA that renegotiates sales terms with the customer. Thus, the petitioners claim, because the customer's only dealings are with CCC USA, the sales contract between two U.S. corporations, *i.e.*, CCC USA and its customer, is executed in the United States.

SICARTSA asserts that the Department's preliminary determination that all of SICARTSA's U.S. sales were EP sales was correct based on the fact that all of the sales were made "from outside the United States before the date of importation into the United States."³ In fact, SICARTSA agrees in principle with several of the points put forth by the petitioners. For instance, SICARTSA states that the petitioners are correct in their characterization of the relationship between CCC Steel and CCC USA, *i.e.*, that CCC USA acts as an agent in the United States for CCC Steel and that the acts of CCC USA must be attributed to its principal, CCC Steel. And while acknowledging that CCC USA negotiates the details of sales with U.S. customers, SICARTSA claims that all such negotiations are subject to approval by CCC Steel in Germany. It is this key point, according to SICARTSA, on which the Department must focus in determining the location of the U.S. sale. In other words, which party exercises control over the sales process? SICARTSA insists that CCC USA has no power to exercise ultimate control over the sale to the U.S. customer. SICARTSA agrees with the petitioners' contention that the CAFC's ruling in *AK Steel* applies: that if the sale takes place outside the United States the sale is an EP sale, and asserts that record evidence shows that sales through CCC Steel take place in Germany.

The Department's Position:

We agree with SICARTSA that sales made through CCC Steel were made "outside the United States" as defined in the *AK Steel* decision and therefore should be treated as EP sales. The record evidence as verified indicates that the sales in question are made outside the United States to unaffiliated customers in the United States.

We note that both SICARTSA and the petitioners appear to agree on a central principle of the *AK*

² Petitioners' case brief at 8, quoting *AK Steel* at 1368.

³ *Preliminary Determination* at 17399.

Steel decision that it is the “locus of the transaction” that finally determines whether the Department classifies sales as EP or CEP.⁴ The disagreement between the two parties centers on how we define when, and thus, where, the “transaction” takes place. *AK Steel*, however, suggests a definition when the CAFC addresses the meaning of the terms “sold” and “seller” used in defining EP and CEP sales in the statute.⁵ The court acknowledged that “sold” and “seller” are not themselves defined in the statute and states that “[w]hen a word is undefined in the statute the agency and the reviewing court normally give the undefined term its ordinary meaning.”⁶ The CAFC cited the *Blacks Law Dictionary* (6th ed., 1990) definition of “seller” as “one who has contracted to sell property . . . the party who transfers property in the contract of the sale.” Regarding the definition of “sold,” the court cited one of its previous decisions, *NSK Ltd. v. United States*, 115 F.3d 965 (Fed Cir. 1997), in which it “defined ‘sold’ to require both a ‘transfer of ownership to an unrelated party and consideration.’”⁷ Based on these definitions, the CAFC found in *AK Steel* that sales under consideration in that case should be considered CEP because it was the U.S. affiliate of the Korean producers, and not any entity outside the United States, that contracted for sale with the unaffiliated U.S. customers.

In the instant investigation, the record evidence as verified clearly shows that it is CCC Steel in Germany, and not CCC USA, that executes the sales contracts with unaffiliated customers in the United States for all SICARTSA sales of steel wire rod made through CCC Steel. While we acknowledge the active role of CCC USA as CCC Steel’s agent in negotiating the U.S. sales and overseeing the logistics of delivery and receipt of payments, we found in our verification that CCC Steel in Germany retains the final say in determining what terms of sale will be accepted. CCC Steel’s control over the execution of the sales contracts is explicit in both the written Service Agreement it maintains with its U.S. subsidiary and its practice of issuing the invoice from its German headquarters directly to the unaffiliated customers.⁸

Comment 1b: Deducting Selling Expenses for CEP Sales

The petitioners argue that, pursuant to sections 772(d)(1)(A), (B) and (C) of the Act, in calculating CEP the Department will subtract from the starting price commissions, direct

⁴ See *AK Steel* at 1369.

⁵ See *id.* at 1371. See also Tariff Act of 1930, as amended (the Act) Section 772 (a)-(b).

⁶ See *AK Steel* at 1371 and *Perrin v. United States*, 444 U.S. 37, 42 (1979) (“A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning.”)

⁷ See *NSK Ltd. v. United States*, 115 F.3d 965, 973 (Fed Cir. 1997) at 975. The cited decision concerned the definition of exporters sales price (now CEP).

⁸ See Memorandum for Gary Taverman from David Layton and Marin Weaver: Sales Verification of the Questionnaire Responses of CCC Steel GmbH in the Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Mexico, June 19, 2002 (CCC Sales Verification Report) at 4-8.

expenses and selling expenses incurred by or on behalf of the account of the producer or exporter, or the affiliated reseller in the United States. Further, under section 772(d)(1)(D) of the Act, the Department will subtract any other selling expenses incurred by or for the account of the producer or exporter, or the affiliated reseller in the United States that are not explicitly identified in the aforementioned sections of the statute.

The petitioners state that the Department has uniformly considered the indirect selling and general and administrative (G&A) expenses of an affiliated reseller in the United States to be indirect selling expenses associated with economic activities occurring in the United States. Meanwhile, according to the petitioners, expenses recorded by branches of multinational corporations located outside the United States may or may not be deducted from the starting price depending on the nature of the activities for which the expenses are incurred.

The petitioners point out that SICARTSA reported in its section C questionnaire response (at 46) that expenses incurred by CCC USA in the United States were reported on the same basis as expenses incurred by CCC Steel in Germany. Accordingly, the petitioners argue, CCC USA's indirect selling expenses must be deducted in the calculation of CEP. Using information from CCC USA's income statement in SICARTSA's section A questionnaire response Exhibit A-16, the petitioners propose a ratio with which to calculate indirect selling expense as a percentage of gross unit price.

Furthermore, the petitioners claim that the Department must also deduct selling expenses incurred by CCC Steel. Citing to section 351.402 of the Department's regulations, the petitioners state that in calculating CEP the Department must deduct expenses related to the sale to the first unaffiliated U.S. customer "no matter where or when paid" in order that expenses associated with commercial activities in the United States and relating to the sale to the unaffiliated purchaser will be deducted, even if, for example, the foreign parent of the affiliated U.S. reseller pays the expenses. Consequently, the petitioners argue, deduction of CCC Steel's indirect selling expenses recorded in Germany is supported by administrative and judicial precedent.⁹ This practice was upheld by the CIT in *Mitsubishi Heavy Industries Ltd. v. United States*, 15 F. Supp. 2d 807 (CIT 1998), where the Court held that "{e}xpenses incurred outside the United States could still be 'associated with' economic activities occurring in the United States." *Id.*, 15 F. Supp. 2d at 818. Accordingly, the petitioners claim that the Department must deduct all U.S.-related expenses booked by CCC Steel in Germany.

The petitioners proposed a ratio based on information from CCC Steel's financial statements included in SICARTSA's section questionnaire response.

⁹ The petitioners cite to *Stainless Steel Sheet and Strip in Coil from Germany: Notice of Final Results of Antidumping Duty Administrative Review*, 67 FR 7668, 7670 (February 20, 2002) where the Department deducted selling expenses relating to economic activity in the United States but incurred in Germany by the German producer's sales agency.

The Department's Position:

Since we are treating all SICARTSA sales through CCC Steel as EP, this issue is moot.

Comment 1c: SICARTSA's Direct Sales to the United States

The petitioners note that all of SICARTSA's direct U.S. sales were made to a single customer, which the petitioners refer to as "a purportedly unaffiliated trading company."¹⁰ All such sales were deemed by the Department in the preliminary determination to be EP sales. For the final determination, the petitioners argue, the Department should treat sales through the customer in question as CEP transactions.

While recognizing that SICARTSA and its customer are not affiliated through ownership, the petitioners suggest that the circumstances involved in SICARTSA's sales to the customer in question indicate affiliation in a substantial way. Section 771(33) of the Act allows for a finding of affiliation not only for family relationships and equity ownership, but also where one party is directly or indirectly controlled by another, with control defined as a situation where one person "is legally or operationally in a position to exercise restraint or direction over the other person." The petitioners further cite to section 351.102(b) of the Department's regulations, which says:

. . . the {Department} will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. The {Department} will not find that control exists on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product.

Based on discussions in the Department's sales verification report, the petitioners contend that "SICARTSA wields as much operational control over {the customer in question} as it does over CCC Steel."¹¹ Given the relationship between SICARTSA and the customer in question, the petitioners insist that this customer is simply the second half of SICARTSA's U.S. distribution operations. The petitioners state that, because this customer sells to the same class of customer as does CCC Steel's, it is difficult to see how this customer's prices could differ significantly from CCC Steel's, adding that if this customer wishes to carry SICARTSA's wire rod products, it has no choice but to accede to SICARTSA's pricing demands. That being the case, the petitioners

¹⁰ In the petitioners' case brief and SICARTSA's reply brief, the parties identify the sales by the actual name of the customer. Due to the proprietary nature of the customer names, in this public document we will refer to the customer as the "customer in question." The specific selling arrangements that SICARTSA has with this customer are also proprietary and are discussed in the briefs and also in our verification report for SICARTSA. See Memorandum for Gary Taverman from David Layton and Marin Weaver: Sales Verification of the Questionnaire Responses of Siderurgica Lazaro Cardenas Las Truchas, S.A. de C.V. in the Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Mexico, June 19, 2002 (Sales Verification Report) at 7-8.

¹¹ Petitioners' case brief at 16.

state that the customer in question should be deemed to be “controlled” by SICARTSA, and sales through this customer should be treated as CEP sales.

The petitioners recognize that the Department has not requested that the customer in question report its sales to unaffiliated customers, nor the selling expenses it incurs in making those sales. As a proxy, the petitioners suggest that the Department construct a reasonable approximation of this company’s resale prices by “adding to its acquisition cost, (*i.e.*, the prices nominally charged to it by SICARTSA) the average markup reported by CCC Steel.”¹² Likewise, the petitioners propose that the Department calculate the adjusted CEP by subtracting the average U.S. indirect selling expenses reported by CCC Steel and CCC USA. Finally, the petitioners request that if the Department determines this proposed methodology for calculating CEP sales to be inappropriate, it revisit the issue of affiliation between SICARTSA and its customer during the first administrative review of any antidumping order on steel wire rod from Mexico.

SICARTSA notes that while the petitioners acknowledge that SICARTSA and the customer in question are not related, the petitioners nevertheless intimate that the high percentage of U.S. sales being sold through this customer signifies some type of affiliation. SICARTSA argues that the petitioners offer no basis for this suggestion other than to imply that SICARTSA is in a position to exercise “restraint or direction” over its customer.

SICARTSA characterizes the customer in question as “a major multinational trading company that buys and sells virtually every type of steel product,” and that it is “only logical that SICARTSA should seek to distribute its merchandise through this kind of distributor, and not unusual that it would select” this particular distributor. *See* SICARTSA rebuttal brief at 6. SICARTSA refutes the petitioners’ claim that, by virtue of the fact that it sells a significant percentage of its U.S. sales through this distributor, SICARTSA wields as much operational control over this customer as it does CCC Steel. SICARTSA contends that if it were to withdraw its business from this customer for any reason, this customer, due to its diversification of worldwide supply, would have no trouble replacing SICARTSA’s material.

The Department’s Position:

We have found no evidence to support the reclassification of SICARTSA’s “direct sales” to one customer as CEP sales and will therefore continue to treat them as EP sales. The petitioners themselves appear to concede that there is no evidence of affiliation by ownership. We examined the relationship of SICARTSA and the customer in question at verification in our review of SICARTSA’s corporate structure, affiliation, and sales process. We found no indication that the specific selling arrangements convey any measure of control to SICARTSA over the selling practices of the customer in question.

We note that the fact that a respondent sells a large percentage of sales through one customer does not automatically create a situation in which the respondent is affiliated with a reseller on

¹² *Id.* at 17.

the basis of control. Other factors such as written exclusive supplier agreements and lack of alternative sources of supply are also considered in determining the level of control a respondent may have over a reseller customer. In the case of the customer in question, we have found no additional factor that would cause us to conclude that SICARTSA exercises substantial control over the reseller's sales of the subject merchandise.

Comment 2: Post-Sale Discounts

The petitioners argue that the Department should disallow home-market price adjustments for "purported" post-sale discounts because they were not based on pre-existing agreements between SICARTSA and its customers. First, the petitioners state that whenever downward price adjustments are made after invoicing, such adjustments must be considered to be post-sale rebates. As such, the petitioners argue that the "rebates" must be disallowed because they were not given on the basis of pre-existing, predictable formulae. More to the point, according to the petitioners, allowing adjustments granted on an *ad hoc* basis would enable the respondent to adjust normal value with an eye toward the margin calculation.

Beyond the *ad hoc* nature of the reported adjustments, the petitioners add that SICARTSA's claimed "rebates" appear highly questionable. Specifically, the petitioners assert that the reasons put forward by SICARTSA for allowing these adjustments are vague and unacceptable. Moreover, the petitioners state that, in its response to the Department's supplemental questionnaire, SICARTSA provided no rebate agreements but, rather, gave *ad hoc* examples of paying "rebates" without any discussion of how such payments represent consistent policies or practices. Furthermore, the petitioners claim that, at verification, the Department confirmed that these "rebates" were applied totally on a case-by-case basis, with no reference to future discounts of this type on either purchase orders or invoices (the petitioners cite to the sales verification report at 10-11). According to the petitioners, the fact that the Department verified that these adjustments were assigned to specific transactions, that reasons were given for the payments, and that they were authorized, is not germane to the question of whether they should be allowed to reduce normal value.

SICARTSA states first that the Department verified that the reported price adjustments were correct. Further, notwithstanding the petitioners' arguments to the contrary, SICARTSA insists that it has provided evidence that it does maintain a consistent policy in applying these discounts and that it implements this policy in the normal course of business, pointing to page BC-18 of its February 26, 2002, response, as well as Exhibit B-6 of its January 2, 2002 response. SICARTSA argues that the Department's policy is to allow adjustments for non-quantity-based discounts and rebates if granting the discounts is a standard business practice.

The Department's Position:

We agree with the petitioners that SICARTSA's manual discounts might be more technically termed rebates. It is the Department's practice to consider discounts granted after the delivery of the merchandise to the customer to be rebates. However, we disagree with the petitioners'

argument that these rebates should be disallowed because they were not based on pre-existing agreements. While manual discounts, or rebates, were granted on a case-by-case basis, we found SICARTSA had a consistent practice for granting them, which included the need to obtain final approval from SICARTSA's overall sales administrator (*Director de Comercializacion*).¹³ Further, the Department's regulations state that we "will use a price that is net of any price adjustments, as defined in 19 CFR 351.102(b), that is reasonably attributable to a subject merchandise or foreign like product (whichever is applicable)"¹⁴ At verification we found evidence through examining manual credit notes, internal approval sheets and the Triton accounting system that the manual discounts were actually granted by SICARTSA to its home-market customers.¹⁵ Therefore, for the final determination we will continue to grant a home-market price adjustment for these rebates.

Comment 3: Credit Expense/Interest Rate

For purposes of calculating credit expense, the petitioners argue that SICARTSA improperly reported borrowing rates based on the experience of all Villacero Group companies, although SICARTSA is not a part of a consolidated group of companies. Accordingly, the petitioners assert that SICARTSA must recalculate credit expense based on interest rates specific to SICARTSA rather than the group companies.

In addition, the petitioners suggest that it appears SICARTSA misreported credit expense for certain U.S. sales. Specifically, the petitioners claim that credit expense for these sales was understated based on the reported order dates, payments dates and payment terms associated with these sales. The petitioners propose that the Department assign for these sales a credit expense based on the average credit expense for other direct sales.

SICARTSA counters that it correctly reported credit expense and points to the Department's sales verification report as support. First, with respect to the specific sales addressed by the petitioners, SICARTSA states that the sales verification report notes that although "actual payment terms for the direct U.S. sales generally differed from the formal coded terms," credit expense was "correctly reported" for these sales.¹⁶ SICARTSA points out that a portion of the disputed credit expenses were tested at verification and the Department was able to successfully trace payment for these sales to SICARTSA's records and to the company's bank statement.¹⁷

As to the question of its use of the borrowing rates based on the experience of the all Villacero

¹³ Sales Verification Report at 11.

¹⁴ See 19 CFR 351.401(c).

¹⁵ *Id.* at 12.

¹⁶ Sales Verification Report at 9.

¹⁷ *Id.*

Group companies, SICARTSA contends that it provided in its section B questionnaire response, a detailed description of its interest rate calculation along with worksheets identifying the companies obtaining the loans. Further, SICARTSA states that the Department accepted this response and never asked SICARTSA to revise it. Finally, SICARTSA notes, the Department at verification reviewed SICARTSA's methodology and source documents supporting SICARTSA's credit expense calculations, "noted that SICARTSA used the short term loans of all Villacero Group companies, and 'found no discrepancies.'"¹⁸

The Department's Position:

We agree with the petitioners' argument concerning the use of consolidated interest rates for calculating credit expense. We recognize that we accepted SICARTSA's use of "consolidated" interest rates, one each for Mexican peso and U.S. dollars short-term loans, in calculating credit expense for the preliminary determination. Although at verification the Department found no discrepancies in SICARTSA's application of the short-term interest rates of all the Villacero Group companies, we have determined that this is not the most appropriate rate. It is the Department's practice to use publicly available information to establish a short-term interest rate applicable to the currency of the transaction in the absence of company-specific short-term rates, which are not on the record in this case. *See Import Administration Policy Bulletin 98.2.* Therefore, we have recalculated SICARTSA's U.S. dollar and Mexican peso short-term interest rates used in the respective calculations of U.S. and home market credit expense. For SICARTSA's U.S. sales and home market sales denominated in U.S. dollars we calculated a POI-average interest rate based on the "bank prime loan" rate published by the U.S. Federal Reserve Bank. For home market sales denominated in pesos, we used a POI-average Mexican "lending rate" from the *International Financial Statistics*, published by the International Monetary Fund.

We disagree with the petitioner's assertion that SICARTSA misreported its credit expenses. The petitioners cite the example of observations in which one payment date was made well before the invoice date and was inconsistent with the terms of sale on the invoice. First, we found at verification that "payment terms for the direct U.S. sales generally differed from the formal coded terms, but were correctly reported in the fields for multiple payment days (PAYDTxU) and payment percentages (PERPAYxU) in the response."¹⁹ Second, at verification we found that it was not uncommon for customers to prepay sales, sometimes months in advance, and we were able to trace the payment to SICARTSA's records and to the company's bank statement.²⁰ Moreover, at verification we traced the invoice, VEA/6000246, for the observations sited in the petitioners' case brief and confirmed that the payment dates reported were indeed the appropriate ones.²¹ We are satisfied that SICARTSA correctly reported its payment dates and used these

¹⁸ SICARTSA case brief at 9, citing sales verification report at 27 - 28.

¹⁹ Sales Verification Report at 8.

²⁰ *Id.*

²¹ *Id.* See also Verification Exhibit 7.

payment dates correctly in calculating credit expense.

Comment 4: Customs Duties Adjustment

SICARTSA argues that the Department should adjust EP for customs duties not collected on imports of raw materials and variable overhead by virtue of the fact that the final product was exported. SICARTSA notes that it made the request in its section C questionnaire response that the Department make the adjustment in accordance with section 772(c)(1)(B) of the Act. According to SICARTSA, the statute makes clear that the Department shall make an adjustment where duties are first paid and then rebated, as well as in situations where import duties are never paid.

In its February 27, 2002, response to a supplemental questionnaire, SICARTSA provided more information about the *Programa de Importacion Temporal para Producir Articulos de Exportacion (PITEX)*, whereby SICARTSA is exempted from the payment of customs duties by reason of the exportation of the finished product. SICARTSA points out that its request for this adjustment is supported by the fact that in *Stainless Steel Sheet and Strip in Coils from Mexico*, the Department made the adjustment where the same program (*i.e.*, PITEX) was involved.²²

SICARTSA claims that it has satisfied the criteria considered by the Department to qualify for the duty drawback adjustment, and that at verification the Department confirmed that:

{w}hen raw materials are imported SICARTSA pays no duty on them, but has to submit an annual PITEX report to the Mexican government to show what has gone into domestic production and what has gone into export production. SICARTSA must then pay duties and VAT on the materials that have gone into domestic production.

Sales verification report at 29.

In order to meet the second criterion, SICARTSA points out that it provided evidence that it had an inventory of each imported material, demonstrating that its imports were more than sufficient to cover the materials incorporated into the exported products. The petitioners counter that the Department was correct in its preliminary determination to deny the adjustment, adding that the PITEX exemption does not meet the Department's two-pronged test for duty drawback. Specifically, the petitioners argue that SICARTSA has not established that the duty and rebate are directly linked to and dependent upon one another. More to the point, the petitioners assert,

²² The Department applies a two-pronged test to determine whether to make a duty drawback adjustment: 1) import duties and rebates are directly linked to and are dependent upon one another; and 2) the company claiming the adjustment can demonstrate that there are sufficient imports of raw materials to account for the duty drawback received on the exports of the manufactured product. In applying this test in *Sheet and Strip from Mexico*, the Department stated that it "has never established a prerequisite that import duties must actually be paid and subsequently rebated in order for there to be the necessary link in justifying an adjustment to the U.S. starting price." 67 FR 6490 (February 12, 2002).

there is no evidence that any duties were actually collected, despite the fact that SICARTSA also sells steel wire rod domestically.

In addition, the petitioners note that SICARTSA has suggested that the *PITEX* exclusion applies not only to the value of the imported materials, but to the value of variable overhead used to produce steel wire rod. The petitioners argue that, while it is unclear how *PITEX* operates with respect to variable overhead, it is difficult to see how a program that forgives customs duties assessed on the value of variable factory overhead could properly qualify for the Department's duty drawback criteria.

Furthermore, according to the petitioners, record evidence does not support SICARTSA's claim that it had sufficient imports to produce the exported merchandise. The petitioners add that at verification SICARTSA presented the Department with a substitute worksheet that affected SICARTSA's eligibility for the duty drawback adjustment, and that it was inappropriate for the Department to accept this information. Nevertheless, the petitioners claim, the evidence provided does not satisfy the Department's two-pronged test and, thus, for the final determination, the Department should continue to deny the adjustment.

The Department's Position:

We agree with respondent. Section 772(c)(1)(B) of the Act explicitly provides for a duty drawback adjustment for import duties "imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject product to the United States." The petitioners' argument that SICARTSA has to pay and receive a rebate in order to qualify for duty drawback adjustment is contrary to the statute and the Department's practice. See, e.g., *Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review* 63 FR 46753 (Sept. 2, 1998) and *Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review* 67 FR 6490 (Feb. 12, 2002) where the Department accepted duty exemptions under *PITEX* as allowable duty drawback adjustments. Therefore the Department will apply the two-prong duty drawback test as it was applied in *Carbon Steel Wire Rope From Mexico; Final Results of Antidumping Duty Administrative Review* 63 FR 46753 (Sept. 2, 1998).

Under the *PITEX*, duties were not collected and then rebated upon exportation of the imported goods. Instead, the *PITEX* suspended the collection of duties contingent upon the exportation of the relevant materials within a requisite time frame. Under the *PITEX*, SICARTSA did not pay duties on certain raw materials imported for the production of steel products, including wire rod, that would be sold abroad. The Department examined and reviewed the *PITEX* at verification. SICARTSA must submit an annual report to the Mexican government to show how much of the raw material imports went to domestic production and export production, respectively, and then pay the duties on the raw materials used in domestic production.²³ SICARTSA provided its 2000

²³ Supplemental Questionnaire at Exhibit BC-19, (Feb. 27, 2002) see also Sales Verification report at 28.

PITEX report in its supplemental response²⁴ and we examined it at verification.²⁵ We verified that SICARTSA conformed to the requirements of the *PITEX*, one of which is that exports be sufficient to account for the drawback claimed. Thus, we determine that SICARTSA has met the first prong of the Department's test for duty drawback adjustment.

To meet the second prong of the test SICARTSA must demonstrate that there were sufficient imports of raw material to account for the duty drawback received on the exports of the manufactured product. The petitioners asserted that SICARTSA does not meet this requirement based on the worksheet entitled Import Duties and Value Added Tax (VAT) Not Paid, provided by SICARTSA in its supplemental response.²⁶ A revised version of this worksheet was collected at verification.²⁷ We verified the information feeding into the revised worksheet and we are satisfied that SICARTSA had sufficient imports of raw materials to account for the exportation of steel wire rod.

SICARTSA explained, in its initial questionnaire response and case brief, that it was required to pay import duties or VAT on imported direct materials or variable overhead. In its supplemental response SICARTSA explained in detail and demonstrated how it calculated the duty forgiveness on imported materials inputs used to produce exports in 2000. We verified SICARTSA's explanation and calculation of its duty exemption based on the raw materials imported and subsequently used in the production of exports. At verification we traced the value of the raw materials imports used to calculate duty drawback directly to the 2000 *PITEX* report.²⁸ Additionally, we found no evidence that variable overhead was part of the duty drawback.

Comment 5: Critical Circumstances

On February 11, 2002, the Department made a preliminary affirmative determination of critical circumstances based on record evidence available at that time. The petitioners argue that the Department should now make a final affirmative determination of critical circumstances.

²⁴ Supplemental Questionnaire at Exhibit BC-19, (Feb. 27, 2002).

²⁵ Sales Verification Report at 28.

²⁶ See Petitioners' Rebuttal Brief at 2. The worksheet is found in SICARTSA's Supplemental Questionnaire at Exhibit BC-19, (Feb. 27, 2002).

²⁷ See Sales Verification Report at Exhibit 27 for corrected worksheet. The petitioners argue that it was inappropriate for the Department to have accepted the revised Import Duties and VAT Not Paid worksheet. See Petitioners' Rebuttal Brief at 2. The Department determined that it was appropriate to collect this worksheet at verification because it corrected ministerial errors in the original worksheet's "consumption" calculation in which incorrect numbers had been used to calculate consumption. The Import Duties and VAT Not Paid worksheet from verification correctly calculated the consumption levels. At the same time, the calculated duty drawback remained unchanged by this correction.

²⁸ See Sales Verification Report at Exhibit 27.

One of the prerequisites for an affirmative determination of critical circumstances is that the importer of the subject merchandise either knew, or should have known, that the exporter was selling at less than normal value. The Department normally imputes knowledge where it finds dumping margins of 25 percent or higher for EP sales and at least 15 percent for CEP sales. The petitioners point out that the Department calculated a preliminary weighted-average dumping margin for SICARTSA of 25.70 percent. With a finding that all of SICARTSA's U.S. sales were CEP sales, as the petitioners have argued, the threshold for knowledge of dumping falls to 15 percent. The petitioners argue further, however, that even if the final margin falls below whichever threshold the Department deems appropriate for SICARTSA, either 15 percent or 25 percent, the Department should make a final affirmative determination of critical circumstances in light of the fact that importers should have known SICARTSA was dumping based on the final margins which, according to the petitioners, are substantial by any measure.

The second prerequisite for a finding of critical circumstances is a finding that imports of the subject merchandise have been "massive" over a "relatively short period of time." The Department's normal practice is to find massive imports when the level of imports has increased by at least 15 percent when compared with the relevant base period.

The petitioners note that in its preliminary determination of critical circumstances the Department established that importers and foreign suppliers had reason to believe by June 2001 that antidumping cases were likely to be fielded against steel wire rod from a host of countries, including Mexico.²⁹ As a result, the Department determined that December 2000 through May 2001 should serve as the base period, while the comparison period would be June through November 2001. The Department found that, during this period, SICARTSA's imports increased sufficiently to be considered "massive" for purposes of a finding of critical circumstances. The petitioners argue that the same comparison period should be used for the final determination, but that even if the period is expanded to include December 2001 and January 2002, with a corresponding extension to the beginning of the base period, the monthly shipment data submitted by SICARTSA still show that the massive imports criterion is met.

In deciding when exporters and importers of steel wire rod from Mexico had reason to believe that a petition would be filed, SICARTSA argues that articles submitted by the petitioners are insufficient for purposes of imputing knowledge that a proceeding was likely prior to the September 2001 filing of the petition, which, according to SICARTSA, is the standard set forth under section 351.206(i) of the Department's regulations. SICARTSA claims further that other cases cited by the petitioners to support their assertion are not relevant to the instant investigation. For instance, in *Steel Concrete Reinforcing Bars from the People's Republic of China*, 65 FR 54228 (September 7, 2000), the Department found that a reference to planned dumping actions against imports from "Asian" countries was enough to provide sufficient notice of an investigation against imports of rebar from the People's Republic of China. Similarly, in *Certain Cold-Rolled Carbon-Quality Steel Flat Products from Venezuela*, 65 FR 18047 (April 6, 2000), the Department determined that pending unfair trade cases against "South America"

²⁹ See *Preliminary Critical Circumstances*, 67 FR at 6226.

served notice to exporters and importers of that product from Venezuela.

In the instant investigation, SICARTSA points out that the press releases cited by the petitioners specifically identified countries other than Mexico as targets of threatened litigation. SICARTSA states that this “threat was buttressed by a general press release stating that a case was being prepared on wire rod.” SICARTSA case brief at 18. Still, SICARTSA asserts that no mention was made of Mexico, North America, or even of the Western Hemisphere. Instead, the press releases were highly specific in the countries named, leaving no ambiguity. Thus, notwithstanding the petitioners claims to the contrary, SICARTSA suggests that the press releases would likely have been read by exporters and importers of steel wire rod from Mexico as an indication that Mexico would not be a target of any petition.

SICARTSA contends that if the Department accepts the petitioners’ claims in this regard, it would stand for the proposition that a press release that identifies a specific country or countries to be targeted by an investigation would effectively put on notice exporters and importers from all countries that an investigation is “likely,” which would represent an enormous broadening of the requirement under section 351.206(i), whereby the Department normally considers a “relatively short period of time beginning on the date the proceeding begins”

As to the question of massive imports, SICARTSA claims that the Department should not look to whether there were massive imports during a “relatively short time” beginning in June 2001 but, rather, to the period following the filing of the petition on August 31, 2001. That being the case, SICARTSA states that there have not been massive imports of steel wire rod from SICARTSA based on the normal comparison periods established by the Department’s regulations.

The Department’s Position:

In accordance with Section 735 (a)(3)(A)(i) and (A)(ii) of the Act, a critical circumstances determination requires a finding that either 1) “there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise” or 2) the importer “knew or should have known that they exporter was selling subject merchandise at less than fair value and that there would be material injury by reason of such sales.” We have not found a history of dumping of steel wire rod from Mexico.³⁰ Therefore we must determine if the importers knew or should have known they were selling subject merchandise at less than fair value. In order to determine this we must use the final margins as determinate. When sales (as here) are EP it is our practice to find imputed knowledge of dumping if the estimated dumping margin is 25 percent or greater. *See, e.g., Memorandum to Faryar Shirzad from Richard Moreland, Re: Issues and Decision Memorandum for the Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People’s Republic of China* dated April 13, 2000 at Comment 10. Since SICARTSA’s final weighted margin is less

³⁰ See Memorandum to: Faryar Shirzad from: Bernard Carreau: Antidumping Duty Investigation of Carbon and Certain Alloy Steel Wire Rod from Mexico and Trinidad and Tobago – Preliminary Affirmative Determinations of Critical Circumstances at 3.

than 25 percent we find that the importers did not know or should not have known that SICARTSA was selling subject merchandise at less than fair value. It is unnecessary to analyze whether there have been massive imports over a relatively short period. Therefore, we find that critical circumstances do not exist for SICARTSA.

II. ISSUES SPECIFIC TO COSTS:

Comment 6: Initiation of Cost Investigation

SICARTSA argues that the Department should rescind its notice of initiation of a sales below cost investigation. SICARTSA asserts that on October 9, 2001, it presented a letter to the Department that demonstrated that the cost of production (COP) investigation was initiated in error, and that the home market sales presented in the petition would not have been below cost if the information presented by the petitioners had been corrected. According to SICARTSA, the petitioners did not meet the legal standard for initiating a cost investigation. SICARTSA argues that under section 773(b)(2)(A)(i) of the Act, the Department may initiate a COP investigation only if it has reasonable grounds to believe or suspect that sales were made at prices that were less than the COP of the product. SICARTSA notes further that section 732(b)(1) of the Act requires that a petition be accompanied by information reasonably available to the petitioners supporting the allegation. SICARTSA asserts that information reasonably available includes information specific to the country in question or, in the absence of such information, information of the petitioner adjusted for known differences.

First, SICARTSA maintains that in calculating COP, the petitioners relied on their own costs, but did not adjust for known differences between U.S. and Mexican raw material costs. SICARTSA claims that it is not reasonable to assume that there were no differences between U.S. and Mexican producers' raw material costs. SICARTSA asserts that evidence concerning material costs in Mexico was reasonably available to the petitioners, and that they should have been required to provide it in their petition. Second, SICARTSA argues, the selling, G&A expense and financial expense data used in the cost allegation relate to Altos Hornos de Mexico, S.A. de C.V. (AHMSA), a company that is publically known to be almost bankrupt, and that has not produced wire rod in the last five years. Third, SICARTSA maintains that in the petitioners' calculation of the financial expense factor they did not account for foreign exchange and monetary gains and losses. SICARTSA argues that such costs must be included in Mexican companies' financial statements under Mexican generally accepted accounting principles (GAAP). If these items had been included in the financial expense ratio, SICARTSA asserts, the home market sales provided by the petitioners would not have been below the COP.

The petitioners argue that there is no basis for rescinding the cost investigation. According to the petitioners, SICARTSA in effect faults the Department for not responding affirmatively to the arguments presented in its October 9, 2001, letter. According to the petitioners, the fact that the Department did not accept SICARTSA's rebuttal at the outset of this investigation distinguishes this case from other cases where the Department has rescinded a COP investigation shortly after initiation based on a respondent's arguments. See, *e.g.*, *Torrington Co. v. United States*, 786 F. Supp. 1011 (CIT 1992). Petitioners argue that the Department must determine whether the

allegation made by the petitioners provides reasonable grounds to believe or suspect that below cost sales have been made in the home market at an early juncture, presumably because under 19 CFR 351.301(d)(2)(i)(B) they would have had a chance to assert a company-specific cost allegation of sales below cost.

Moreover, the petitioners assert that the cost allegation met the relevant legal standards and that SICARTSA's complaints about the quality of the evidence in support of the below cost sales allegation are without merit. The petitioners claimed that because they lacked information on SICARTSA's actual material costs it was by no means unreasonable for them to assume that SICARTSA costs were approximately equal to the costs that domestic producers could obtain on worldwide commodity markets. Further, the petitioners assert, SICARTSA has no basis to find fault with the petitioners' use of financial data from AHMSA and contend that SICARTSA has provided no support for its characterization of AHMSA as being publically known to be almost bankrupt.

Additionally, the petitioners argue, in criticizing the petitioners for not adjusting financial expense for foreign exchange gains or gains in monetary position, SICARTSA overlooks the Department's policy. The petitioners claim that the Department includes only foreign exchange gains and losses related to manufacturing operations and monetary gains and losses related to foreign denominated debt. *See, e.g., Memorandum to Robert S. LaRussa from Joseph A. Spetrini, Re: Issues and Decision Memorandum for the Antidumping Duty Investigation of Cold-Rolled Flat-Rolled Carbon Quality Steel Products from Turkey; Notice of Final Determination of Sales at Less Than Fair Value dated March 21, 2000 (Cold-Rolled Steel from Turkey).* According to the petitioners, AHMSA's financial statements did not provide sufficient information to comply with these policies and thus the impact of such items was properly excluded.

Finally, the petitioners argue that SICARTSA is wrong in stating that they should have recognized AHMSA as having significant negative financial expense because the Department will only set financial expenses to zero. In any event, the petitioners assert, the record now contains substantial evidence to support the conclusions made in the cost allegation, and the Department has confirmed that substantial quantities of sales were made below cost. Therefore, the petitioners argue, the cost allegation has proven to be correct and the Department should reject SICARTSA's request.

The Department's Position:

We agree with the petitioners that there is no basis for rescinding the cost allegation in this investigation. Section 773(b)(2)(A) of the Act requires that the Department have reasonable grounds to believe or suspect that sales of the foreign like product were made at prices that are less than the COP. Reasonable grounds to believe or suspect are determined to exist when the petitioning party provides information based upon observed prices or constructed prices or costs that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of producing the product. "Believe or suspect" in this context does not mean that the Department requires absolute proof that sales

have been made at below cost prices, but rather only that it is reasonable to suspect that such sales are occurring. We believe that the cost allegation submitted by the petitioners provided reasonable grounds for the Department to “believe or suspect” that sales had been made at below cost prices, and that the Department correctly initiated a COP investigation in this proceeding.

In determining whether a cost allegation filed by a petitioning party in an antidumping duty investigation does in fact provide reasonable grounds to “believe or suspect,” the Department reviews the COP information provided by the petitioner to see if it provides a reasonable estimate of the cost to produce the product in the foreign market. Although the Department strives to ensure that the estimated costs in a cost allegation are accurate, as noted above, because a petition is necessarily based on estimates they can rarely be perfectly accurate. The presence or absence of any particular factor or adjustment does not necessarily invalidate the reasonableness of the overall estimate given the standard of “believe or suspect,” nor does it eliminate the possibility that sales below cost have been made.

We disagree with SICARTSA’s arguments that the petitioners’ COP allegation did not meet the Department’s standard. First, in regards to raw material costs, we do not find it unreasonable to use the domestic producer’s costs for raw materials that are in effect worldwide commodities as an estimate for the costs incurred in Mexico. Second, in regards to using AHMSA’s financial statements to calculate the selling, G&A and financial expense ratios, we do not find it unreasonable to use the financial statements of a steel producer in Mexico. Moreover, we find SICARTSA’s claims that AHMSA was known to be bankrupt and had not produced wire rod in five years to be unsupported by evidence. Third, as to SICARTSA’s claim that the petitioners did not account for foreign exchange gains and losses in the financial expense calculation, we note that the information needed to account for these items in accordance with the Department’s practice was not available on the record or reasonably available to the petitioners. Finally, with respect to monetary gains and losses, we note that it was not unreasonable for the petitioners to exclude this amount from the financial expense ratio calculation. At the time the cost allegation was filed, the Department was reconsidering its practice of including the current portion of gains and losses on monetary position in financial expenses, and had been arguing before the Court of International Trade that such amounts should be excluded.

We note that only SICARTSA is in possession of the actual costs that it incurred in producing wire rod during the POI. The petitioners do not have access to a respondent’s actual data and the statute therefore allows them to use estimates. It is for this reason that the statute incorporates the “believe or suspect” standard for initiating sales below cost investigations at a level that is reasonably attainable by petitioning parties. Further, even if the cost allegation in the petition was rejected, the petitioners would have been able to take advantage of their opportunity to allege a company-specific sales below cost allegation under 19 CFR 351.301(d)(2)(i)(B), and would have then been able to use the data from SICARTSA’s section B and C questionnaire responses. Based on the information that is now on the record, an allegation based on these data would have shown that a substantial number of sales were made at below cost prices. Additionally, the fact that the Department confirmed at the preliminary determination that substantial quantities of sales had been made at below cost prices attests to the reasonableness of the Department’s initiation decision.

Comment 7: G&A and Financial Expense Calculation Period

SICARTSA argues that the Department should base the calculation of the G&A and financial expense factors on its 2001 financial statements because that information is the most relevant to SICARTSA's current experience. This approach makes sense, according to SICARTSA, in light of the fact that antidumping duties are intended to represent the amount of duty necessary to offset current sales at less than fair value. SICARTSA contends that if the Department chooses not to use the 2001 data, it should base the factors on an average of the two years encompassed by the POI.

SICARTSA argues that the Department should not calculate the G&A and financial expense ratios based solely on its fiscal year 2000 financial statements. According to SICARTSA, such an approach does not serve the goal of calculating factors that are representative of current conditions or the goal of calculating representative factors for the POI. SICARTSA maintains that it is not the Department's established practice to require that the G&A and financial expense factors be based on the earlier of the two covered years in cases where the POI is equally divided. SICARTSA cites Memorandum to Bernard T. Carreau from Holly A. Kuga, *Re: Issues and Decision Memorandum for Silicon Metal From Brazil; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part* dated February 23, 2001 (Silicon Metal from Brazil) and claims that the Department has such a practice only in cases where the POI spans two fiscal years and audited financial data are not yet available for the later year. In contrast, SICARTSA asserts that it has provided audited financial data for both fiscal years and there is therefore no need to rely on the earlier information. According to SICARTSA, there should be no doubt as to the credibility of its 2001 financial statements because they were both audited by unbiased auditors and verified by the Department.

The petitioners argue that the Department should rely on the 2000 financial statements for the calculation of the G&A and financial expense factors. The Department should reject SICARTSA's position, the petitioners assert, because it is contrary to the Department's policy of relying on the most recently completed financial statements available at the time the questionnaire response is submitted. The petitioners cite Memorandum to Faryar Shirzad from Bernard T. Carreau, *Re: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review; Canned Pineapple Fruit from Thailand* dated October 17, 2001 (Pineapple from Thailand) and maintain that this issue has been established in prior proceedings. The petitioners assert that in *Pineapple from Thailand* the Department faced the same situation that it faces in this proceeding and rejected the petitioners' request to rely on the later financial statements.

The petitioners claim that SICARTSA's 2000 financial statements were the most recently completed statements at the time the response was being prepared, while the 2001 financial statements were not finalized or audited until after the antidumping proceeding was initiated, and thus could have factored in the impact on the dumping calculations. The Department should use the earlier financial statements in cases such as this, the petitioners assert, to avoid the danger of respondents selectively making available more recent financial statements depending on the

impact on the margin calculations.

The Department's Position:

We agree with the petitioners that the Department should use the fiscal year 2000 audited financial statements to calculate the G&A and financial expense factors. In situations where the POI is divided equally between two fiscal years, it is the Department's practice to use the financial statements from the most recently completed fiscal year at the time the questionnaire response was submitted. *See, e.g., Pineapple from Thailand.* This practice enables the Department to calculate the G&A and financial expense ratios on a consistent and predictable basis between countries and respondents, as well as segments of proceedings.³¹ Moreover, the financial statements that include the first six months of the POI are on the record earlier in the investigation, which affords parties more time to review and comment on the data.

In this proceeding, SICARTSA did not submit its fiscal year 2001 audited financial statements to the record until after the preliminary determination. At verification, SICARTSA submitted final versions of these financial statements that included some minor revisions. Thus, final, audited versions of SICARTSA's 2001 financial statements were not available for review and comment until a very late juncture.

In regards to SICARTSA's assertion that the Department only uses the earlier financial statements when audited financial data are not yet available for the later year, we note that this is simply not the case. In relying on the earlier year even in situations where a respondent places the later year's audited financial data on the record at a later point in the investigation, as is the case here, the Department avoids being in the position of having to pick a number. Moreover, the Department avoids the possibility of respondents' selectively providing or withholding data based on how favorable or detrimental it is to their situation. Thus, in accordance with our practice, we have continued to calculate SICARTSA's G&A and financial expense ratios based on the fiscal year 2000 audited financial statements.

Comment 8: Financial Expense Ratio

SICARTSA argues that the Department should base the calculation of the financial expense ratio on the consolidated information for Villacero Group. SICARTSA asserts that using the Villacero Group data is consistent with the Department's goal of calculating financial expenses at the highest level of consolidation and subsequently recognizes both the fungible nature of money and the power of a controlling entity to control the capital structure of a consolidated group. *See, e.g., Memorandum to Faryar Shirzad from Joseph A. Spetrini, Re: Issues and Decision Memorandum for the 1999-2000 Administrative Review of Stainless Steel Sheet and Strip in*

³¹ Not all respondents may have finalized their 2001 financial statements in time for them to be used in their responses. The Department must therefore consistently use the 2000 financial statements across all respondents and countries in this investigation to ensure equal treatment. Additionally, it is important to be consistent between proceedings so that parties can not pick and choose the statements that benefit them most.

Coils from Mexico; Final Results of Antidumping Duty Administrative Review dated February 12, 2002 (*SSSSC from Mexico*). Moreover, SICARTSA maintains, the Department verified Villacero Group's consolidated statements of results, which are prepared in the normal course of business. According to SICARTSA, the Department verified these statements and tied them to audited financial statements, and the fact that there is not an audited financial statement for Villacero Group does not negate the use of the group's financial expense factor.

SICARTSA argues that the fact pattern in this case is different than the fact pattern in *Memorandum to Faryar Shirzad from Richard W. Moreland, Re: Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Steel Concrete Reinforcing Bars from Turkey* dated November 7, 2001 (*Rebar from Turkey*) where the Department was unable to verify the reported consolidated financial expense factor. In that case, SICARTSA points out, the Department declined to use the reported financial expense factor for the group because the respondent failed to include all of the group's subsidiaries in the consolidated information and failed to eliminate inter-company transactions from the cost of sales used as the denominator.

Finally, SICARTSA argues, the calculation of the financial expense factor based on the consolidated information for Villacero Group is consistent with the methodology used by SICARTSA's sister company Tuberia Nacional S.A. de C.V. (TUNA) and accepted by the Department in the final results of several administrative reviews of certain welded carbon pipe and tube from Mexico. SICARTSA notes that while the Department is not required to follow the methodologies used in previous proceedings blindly, it should respect and follow them when the methodology is reasonable and the reported information is verified.

The petitioners argue that the Department should base the financial expense ratio calculation on the consolidated financial statements of Siderurgica del Pacifico S.A. de C.V. (SIDERPAC). According to the petitioners, SICARTSA's attempt to base financial expenses on Villacero Group data is contrary to well-established Department policy and must be rejected. The petitioners maintain that the Department's practice is to use data from audited fiscal year financial statements at the highest level of consolidation and that the Department has rejected such unaudited consolidated interest expense in past cases. *See, e.g., Rebar from Turkey and Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Quality Steel Plate Products from France*, 64 FR 73143, 73151 (December 29, 1999) (*Plate from France*). This policy is sound, the petitioners assert, because relying on audited financial statements lowers the risk of manipulation as such statements are prepared in the normal course of business. The petitioners argue that SIDERPAC's financial statements represent the highest level of consolidation within the group for which audited financial information is available and that this information should therefore be used in the final determination.

The Department's Position:

We agree with SICARTSA that we should calculate the financial expense ratio based on the consolidated financial results of Villacero Group. The Department's established policy is to calculate financial expenses at the highest level of consolidation. *See, e.g., SSSSC from Mexico*

and *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the United Kingdom*, 64 FR 30688, 30709 (June 8, 1999). This policy recognizes both the fungibility of money and the power of a controlling entity to control the capital structure of the entire consolidated group. As the ultimate controlling entity of its consolidated group, Villacero Group is in a position to exercise significant control over all group companies, and thus constitutes the appropriate level for the calculation of financial expenses.

In calculating financial expense at the highest level of consolidation, our preference is to rely on audited financial statements, as such statements provide reasonable assurance that the data have not been manipulated. Although Villacero Group's financial statements are not audited by outside accountants, they historically have been and currently are prepared by the employees of a group company in the normal course of business. Additionally, the Department verified the information in Villacero Group's financial statements and found no reason to believe that those financial statements were erroneous.

With respect to the petitioners' references to *Rebar from Turkey* and *Plate from France*, we find that both cases can be differentiated from the instant proceeding. In *Rebar from Turkey*, the respondent attempted to construct a consolidated financial statement that was not prepared in the normal course of business. In doing so, the respondent failed to include all subsidiaries of the consolidated entity in its "consolidation", and also failed to eliminate inter-company transactions. In *Plate from France*, the further manufacturer in question attempted to calculate its financial expense ratio based on the consolidated financial statements of an entity that did not include the results of the further manufacturer or its immediate parent in its consolidated results. In the instant proceeding, Villacero Group's verified consolidated financial statements were prepared in the normal course of business and they have historically prepared such statements. Further, the statements included the results of all group companies and eliminated all inter-company transactions. We therefore find no reason to disregard these financial statements and have based the financial expense ratio calculation on this information for the final determination.

Comment 9: Gains and Losses on Monetary Position

SICARTSA argues that all gains and losses on monetary position should be included in the calculation of the financial expense ratio. SICARTSA points out that under section 773(f)(1)(A) of the Act, costs are normally calculated based on the records of the exporter or producer if such records are kept in accordance with the GAAP of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the merchandise. SICARTSA argues that the gains and losses on monetary position are included in each company's financial statements as required under Mexican GAAP. Moreover, SICARTSA asserts that including the entire gain or loss on monetary position accurately reflects the expenses associated with the production and sale of steel wire rod. According to SICARTSA, excluding a portion of the gain or loss as the Department did in its preliminary determination skews the results of the COP calculation and incorrectly quantifies the monetary effect of inflation.

SICARTSA states that the majority of its debt is used to finance production equipment and that the payments of interest on this debt, as well as the depreciation on the equipment, are

unquestionably part of COP. Therefore, SICARTSA argues, the Department should include the full gain or loss on monetary position in COP in order to be consistent in the treatment of costs and expenses and to accurately calculate the full cost of acquiring these assets. According to SICARTSA, it makes no sense to exclude these costs on the grounds that they are not current.

SICARTSA holds that it is important to stress that the gain or loss on monetary position deals with effects of inflation only and does not capture the effects of gains or losses due to exchange rate fluctuations, which are quantified and reflected as a separate line item on the income statement. Finally, SICARTSA asserts, the inclusion of the entire gain or loss on monetary position in the calculation of the financial expense factor is consistent with the methodology employed by TUNA and adopted by the Department in several administrative reviews of certain welded carbon pipe and tube from Mexico. *See, e.g., Circular Welded Non-Alloy Steel Pipe and Tube from Mexico; Final Results of Antidumping Duty Administrative Review*, 65 FR 37518 (June 15, 2000) (*Pipe from Mexico*).

SICARTSA argues in the alternative that if the Department does decide to include only the current portion of the gain or loss on monetary position, it should take into account the reclassification suggested by the external auditors in the auditors' certificate on the first page of the 2001 financial statements. According to SICARTSA, the Department should revise the ratio of current to long-term assets to reflect this amount.

The petitioners argue that the Department properly limited monetary gains to the current portion in the calculation of the financial expense ratio in the preliminary determination. According to the petitioners, the Department should reject SICARTSA's arguments and abide by its policy of limiting the allocation of gains and losses on monetary position to that portion related to short-term liabilities. The petitioners cite *Memorandum to Richard W. Moreland from Holly A. Kuga, Re: Issues and Decision Memorandum for the Administrative Review of Dynamic Random Access Semiconductors of One Megabit and Above from the Republic of Korea - 5/1/1998 through 4/30/1999; Final Results* dated November 15, 2000 ("*DRAMs from Korea*") and contend that the Department has articulated this policy in past cases.

The petitioners argue that in the event the Department relies on SIDERPAC's 2001 financial statements to calculate the financial expense ratio, it should reject SICARTSA's request to account for the auditors' reclassification. According to the petitioners, the information relied on in presenting this argument constitutes new untimely information that was improperly provided at verification. The petitioners assert that under 19 CFR 351.302 the Department should return this information to SICARTSA because it was not timely submitted to the record of this proceeding in accordance with 19 CFR 351.301(b)(1). The petitioners maintain that SICARTSA had submitted 2001 financial statements for both SICARTSA and SIDERPAC prior to verification in its April 17, 2002, section D supplemental response and that these statements should be accepted as the final financial statements.

The Department's Position:

We agree with the petitioners that the Department should include only the current portion of the

net gain on monetary position in the calculation of the financial expense ratio. Under section 773(f)(1)(A) of the Act, the Department is required to calculate costs based on a respondent's normal books and records if those records are kept in accordance with the GAAP of the exporting or producing country and reasonably reflect the costs associated with the production and sale of the merchandise. SICARTSA included the entire net gain on monetary position in its financial statements in accordance with Mexican GAAP. For purposes of the dumping analysis, however, we do not find that this treatment properly reflects the cost associated with the production and sale of subject merchandise during the POI. We therefore computed only the net current monetary gain using SICARTSA's current monetary assets and liabilities.

Our practice with respect to gains and losses on monetary position is to include only the current portion of the net gain or loss in the calculation of the financial expense ratio. *See, e.g., Final Results of the First Administrative Review of Fresh Atlantic Salmon from Chile* dated November 16, 2000 (*Salmon from Chile*) and accompanying *Issues and Decision Memorandum* at Comment 1; *Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from Mexico*, 64 FR 14872, 14882 (March 29, 1999) (*Rubber from Mexico*) and *Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order: Altos Hornos de Mexico, S.A. de C.V. v. United States et. al.*, Court No. 01-00018 (April 15, 2002). This method is consistent with the Department's long standing practice of including only the current portion of foreign exchange gains and losses related to debt. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, 31429 (June 9, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Canada*, 63 FR 9182, 9187 (February 24, 1998) (*Wire Rod from Canada*); and *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea*, 63 FR 8934, 8940 (February 23, 1998) (*SRAMs from Korea*).

In the dumping analysis, the Department is required to calculate costs for a given period, which is usually one year. Our practice with respect to foreign exchange gains and losses on debt recognizes only the gains and losses that are associated with current debt (*i.e.*, due within one year) and thereby attempts to capture only gains or losses that are associated with the current year. In accordance with this practice, we have included only the current portion of SICARTSA's foreign exchange gains and losses related to debt in the financial expense ratio calculation. Likewise, we only include the current portion of the gains and losses on monetary position to avoid inconsistent treatment. According equal treatment to both foreign exchange gains and losses and gains and losses on monetary position recognizes the fact that these two concepts are linked.

The vast majority of SICARTSA's net monetary liabilities are related to debt, and the vast majority of that debt is denominated in foreign currency. The foreign denominated debt held by the company directly results in both foreign exchange losses and gains on monetary position. The same foreign-denominated debt which causes foreign exchange losses, because of the declining exchange rate of the peso in relation to the dollar, for example, causes gains on monetary position because of the purchasing power gain from holding liabilities. Moreover, we note that the difference in inflation rates between countries is one of the major factors that causes

exchange rates to move between two currencies.

Mexican GAAP, as codified in the Mexican Institute of Public Accountants Bulletin B-10, *Recognition of Effects of Inflation on Financial Information* (Bulletin B-10), recognizes this linkage between exchange fluctuations and changes in monetary position. Paragraph 117 of the statement states:

In this inflationary period, the concept of cost of financing must be broadened to include, in addition to interest, fluctuations in exchange and the results of maintaining the monetary position, as these factors directly impact the amount paid, in real terms, for the use of debt.

The underlying premise of Mexican GAAP for integral financing cost is that, in the long term, the exchange rate and the level of inflation will be in equilibrium even though the short-term inflation rate may vary significantly from the exchange rate fluctuations. *See* Bulletin B-10 at paragraph 125. Therefore, it would be inequitable to include in the dumping analysis only a portion of the foreign exchange gains and losses and the full amount of the gain on monetary position.

We disagree with SICARTSA's assertion that the Department should include the entire gain or loss on monetary position to be consistent with the methodology used by TUNA in *Pipe from Mexico*. We note that neither the respondents nor the petitioners raised this issue for comment in that case. We believe that we are applying the correct method in this case by including only the current portion as argued above. Moreover, we note that the Department is not required to follow the methodologies employed in prior proceedings.

Finally, we agree with SICARTSA's claim that the Department should revise the ratio of current to long-term net monetary liabilities to account for the reclassification suggested by its auditors in the fiscal year 2001 audited financial statements. The issue is moot, however, as we are calculating the financial expense ratio based on the 2000 financial statements (*see* Comment 7, above).

Comment 10: Prior Period Expenses

The petitioners argue that SICARTSA improperly excluded certain import duties from its fiscal year 2000 G&A ratio calculation. The petitioners cite the Department's cost verification report at page 32 and note that SICARTSA excluded the amount of these duties because it was related to raw materials that were purchased in 1999, where the company did not export its finished goods in time to qualify for non-payment. Under section 773(f)(1)(A) of the Act, the petitioners assert, the Department accepts the accounting of revenues and expenses of a reporting company as long as the home country GAAP does not distort the reported costs. According to the petitioners, SICARTSA has provided no evidence that the Mexican GAAP treatment of these import duties is distortive. Furthermore, the petitioners argue, the Department's practice is to include expenses related to prior periods in a respondent's costs because to do otherwise would involve examining each and every expense transaction. The petitioners cite *Final*

Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada, 58 FR 37099, 37108 (July 9, 1993) (*Carbon Steel from Canada*) in support of their position.

SICARTSA argues that the Department should exclude the import duties related to direct material purchases in 1999 from the G&A ratio calculation if it decides to use the fiscal year 2000 data. SICARTSA asserts that during verification the Department reviewed the import duties and determined that they were in fact related to imports of materials in 1999. SICARTSA contends that because these duties do not relate to wire rod produced or sold during the POI and they are non-recurring, including them in G&A would distort COP and constructed value (CV) and would not reasonably reflect the costs associated with the production and sale of the merchandise as required under section 773(f)(1)(A) of the Act.

SICARTSA cites *Notice of Final Determination of Sales at Less Than Fair Value: Porcelain-on-Steel Cooking Ware from Mexico*, 58 FR 32095, 32101 (1993) and argues that Department precedent supports the conclusion that costs that are unrelated to subject merchandise produced and sold during the period under consideration and infrequent in occurrence should be excluded from the calculation of COP and CV. In that case, SICARTSA points out, the Department did not exclude certain modernization costs because they were not regarded under Mexican GAAP as extraordinary and were necessary for the continuous production of subject merchandise during the review period. In the instant proceeding, SICARTSA asserts, the import duties were classified as extraordinary, related to subject merchandise produced and sold in 1999 (well before the POI) and were non-recurring.

SICARTSA argues that it is not necessary to include the import duties to prevent manipulation and to avoid having to examine each and every expense transaction as the petitioners assert. SICARTSA insists that the petitioners themselves have argued that the 2000 financial statements are more credible than the 2001 financial statements because they were completed prior to the initiation of this proceeding and that if this logic can be assumed to be correct, it follows that the treatment of the import duties in the 2000 statements was not done to affect the dumping margin. Furthermore, SICARTSA maintains, there is no need to examine import duty transactions on an ongoing basis because the evidence of record establishes that charges for import duties in previous years are non-recurring.

The Department's Position:

We agree with SICARTSA that the import duties at issue should be excluded from the G&A ratio calculation. The Department determined at verification that these costs were, in fact, related to material purchases during 1999 and that the charges were non-recurring in nature. Although the recording of these costs during fiscal year 2000 was in accordance with Mexican GAAP, the duties paid bear no relationship to the cost of producing the subject merchandise during the POI.

With respect to the petitioners' reference to *Carbon Steel from Canada*, we find this to be misplaced. In that case, the petitioners argued that the respondent should not be allowed to

reduce its costs for a tax credit related to the prior year because income related to prior years does not relate to the POI. The Department declined to adjust the respondent's costs simply because the impact on COP and CV was negligible, and did not address the issue of whether the prior year tax credit should be included or excluded.

Comment 11: Exchange Gains on Accounts Payable

The petitioners argue that the Department should revise the reported financial expense ratio calculation to exclude exchange gains and losses related to accounts payable. According to the petitioners, such manufacturing-related expenses are properly accounted for at the unconsolidated manufacturer level. Moreover, the petitioners point out, the Department's longstanding policy is to include exchange gains and losses related to accounts payable as part of G&A expenses. The petitioners cite *Final Determination Antidumping Duty Investigation of Stainless Steel Bar from Italy*, 67 FR 3155 and accompanying Issues and Decision Memorandum dated January 23, 2002 (*Stainless Steel Bar from Italy*) in support of their position.

The petitioners assert that SICARTSA's exchange gains and losses on accounts payable have already been properly accounted for in the G&A ratio calculation. Thus, the petitioners argue, including consolidated exchange gains and losses that already include these amounts in the financial expense ratio calculation would represent double counting.

SICARTSA argues that the Department should continue to exclude exchange gains and losses from accounts payable from the financial expense ratio calculation. SICARTSA contends that the Department's treatment of exchange gains and losses related to accounts payable is consistent in the sense that if such gains or losses are removed from the financial expense ratio numerator they are then added to the G&A expense ratio numerator.

The Department's Position:

We agree with the petitioners that exchange gains and losses on accounts payable should be excluded from the financial expense ratio calculation. As the petitioners have noted, the Department's practice in the past has been to include exchange gains and losses related to accounts payable as part of G&A expenses. See, e.g., *Stainless Steel Bar from Italy* and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38785 (July 19, 1999). In accordance with this practice, SICARTSA included in its submitted G&A ratio calculation certain exchange gains and losses that it identified as being related to accounts payable. Contrary to the petitioners' assertion, these same amounts were not included in the financial expense ratio calculation.

We note, however, that the Department learned at verification that the amounts identified by SICARTSA as accounts payable gains and losses were actually related to short-term and long-term financing (see the cost verification report at page 29). Thus, in accordance with our established practice regarding exchange gains and losses on debt, we have included the consolidated gains and losses related to short-term financing in the financial expense ratio calculation. See, e.g., *Wire Rod from Canada* and *SRAMs from Korea*. We also learned at

verification that other exchange gains and losses that actually were related to accounts payable were excluded from G&A and included in financial expenses. We have included the unconsolidated amounts of these gains and losses in the G&A ratio calculation.

Comment 12: Extraordinary Costs

The petitioners argue that the Department should adjust the reported costs to include certain cost of goods sold expenses that were reclassified to extraordinary costs in SICARTSA's financial statements. According to the petitioners, it does not appear that these expenses were included in the cost of manufacturing (COM) submitted to the Department. The petitioners refer to cost verification exhibit B1 and assert that the cost of sales from the 2001 financial statements does not include these extraordinary costs.

SICARTSA argues that it has properly included in the reported COP and CV all of the costs presented as extraordinary expenses in its 2001 financial statements. SICARTSA points out that the cost verification report at page 31 explicitly states that "this was a financial statement entry only, and the costs were included in the Cost by Plant reports used to calculate the reported costs." Thus, SICARTSA asserts, contrary to the petitioners' assertion, the Department specifically verified that SICARTSA reported all costs.

The Department's Position:

We disagree with the petitioners that we should adjust the reported costs to account for certain cost of goods sold expenses reclassified to extraordinary costs. At verification the Department obtained evidence that demonstrated that the costs in question were included in the POI COM in the cost accounting system and that the reclassification entries were not reflected in the monthly reports used to calculate the reported costs. We therefore find that SICARTSA has properly reported these costs and that any adjustment would constitute double-counting.

Comment 13: Major Inputs

The petitioners argue that the cost of iron ore and lime purchased from affiliated parties has been understated. According to the petitioners, the Department confirmed at verification that these costs were not properly reported. The petitioners assert that the Department must correct SICARTSA's iron ore and lime input costs to ensure that they properly reflect the highest of the transfer price, market price or affiliate's COP in accordance with 19 CFR 351.407.

The petitioners contend that even though SICARTSA claimed that arm's length prices paid by SICARTSA for purchases of iron ore and arm's length prices charged by its affiliate Servicios Minerometalurgicos de Occidente (SERMMOSA) for sales of iron ore were unavailable, the Department is still obligated to apply all elements of the statute. To that end, the petitioners assert, the Department must apply the iron ore market price suggested by the petitioners, as published by the U.S. Geological Survey, in its analysis of iron ore costs. According to the petitioners, the Department should reject SICARTSA's suggestion that the Department should consider market prices in Japan rather than market prices in North America because it is highly

implausible that U.S. iron ore prices are not representative of prices that would be paid in Mexico.

With respect to purchases of lime from an affiliated party, the petitioners argue that the Department was unable to consider a COP for lime due to reporting deficiencies by SICARTSA. The petitioners assert that SICARTSA failed to report its affiliated supplier's production costs for lime and that the Department must make an adverse inference in its final determination.

SICARTSA asserts that for purchases of iron and lime from affiliated parties the Department should continue to use the methodology employed at the preliminary determination in accordance with section 773(f)(3) of the Act. SICARTSA refutes the petitioners' argument that the Department should use iron ore prices published by the U.S. Geological Survey as the market price for iron ore. First, SICARTSA asserts, the petitioners have provided no evidence that the U.S. prices actually reflect market prices in the United States, nor have they provided any evidence that U.S. prices are an appropriate surrogate for iron ore prices in Mexico. Moreover, SICARTSA argues, the petitioners did not provide any evidence regarding the iron content of the iron ore. SICARTSA asserts that the Department confirmed at verification that the price SICARTSA pays for iron ore is heavily dependent on ore content and thus the market prices of iron ore provided by the petitioner are meaningless.

The Department's Position:

We agree with the petitioners that SICARTSA's reported costs were understated for affiliated purchases of iron ore and lime. We agree with SICARTSA, however, that the Department properly adjusted these costs at the preliminary determination. Under section 773(f)(2) of the Act, transactions between affiliated parties may be disregarded if the transfer price does not fairly reflect the amount usually reflected in the market under consideration. In applying the statute, the Department normally compares the transfer price paid by the respondent to affiliated parties for production inputs to the price paid to unaffiliated suppliers, or, if this is unavailable, to the price at which the affiliated parties sold the input to unaffiliated purchasers in the market under consideration. If the input in question constitutes a major input under section 773(f)(3) of the Act, the Department compares the transfer price and the market price to the affiliated supplier's COP and adjusts the reported costs to reflect the highest of the three amounts. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews*, 62 FR 18448, 18456 (April 15, 1997).

At the preliminary determination and at verification, we compared SICARTSA's transfer price for iron ore purchased from its affiliate to the affiliate's COP and determined that the affiliate's COP exceeded the transfer price. We then adjusted SICARTSA's reported COM to reflect the higher COP. We were unable to compare the transfer price for iron ore to a market price as there were no unaffiliated purchases or sales (see the cost verification report at page 21). Additionally, we were unable to find a comparable publically available market price for sales of iron ore in Mexico from any other source.

During the course of this proceeding and in its case briefs, the petitioners have suggested that the Department use prices for sales of iron ore in the United States published by the U.S. Geological Survey. We disagree with the petitioners, however, that these prices are reflective of the market under consideration, *i.e.*, Mexico. In addition, these prices were unsupported by documentation and did not specify the ore content of the iron ore.

In past cases where a comparable market price for an input purchased from an unaffiliated supplier was unavailable, the Department has accepted the actual COP incurred by the related supplier as a surrogate. *See, e.g., Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al: Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation in Part of Antidumping Duty Orders*, 60 FR 10900, 10923 (February 28, 1995). In accordance with that practice, and in accordance with section 773(f)(3) of the Act, we have continued to adjust SICARTSA's reported COM to reflect the higher of COP and transfer price for purchases of iron ore from affiliated parties.

We have also continued to adjust SICARTSA's reported COM to reflect the higher of transfer price or market price for purchases of lime from affiliated parties. We disagree with the petitioners' assertion that the Department was unable to consider a COP for lime and thus must make an adverse inference in its final determination. Record evidence indicates that lime is a very small percentage of SICARTSA's total COM. Consequently, we do not consider lime to be a major input in this proceeding and, therefore, find it unnecessary to consider the COP of SICARTSA's affiliated supplier under section 773(f)(2).

Comment 14: Useful Lives of Fixed Assets

The petitioners argue that the Department should reject SICARTSA's discretionary extension of useful lives for fixed assets and revise the reported costs upward to reflect depreciation expenses based on historical useful lives. The petitioners assert that SICARTSA did not abide by U.S. GAAP or International Accounting Standards (IAS) in extending the useful lives of its assets. The petitioners contend that under both U.S. GAAP and IAS the estimated useful life must consider the effect of future maintenance and repair. The petitioners cite *Accountant's Handbook*, Carmichael, Lilien & Mellman (1999) at 16.16a, IAS 4 and IAS 16 in support of this position.

The petitioners assert that while SICARTSA attributes its extensions of useful lives to substantial repairs and maintenance and such extraordinary repairs would result in a change in useful life, accounting principles require that associated expenses be capitalized. The petitioners argue that because SICARTSA does not appear to have complied with this requirement, its increase in useful lives appears to be contrary to GAAP. The petitioners maintain that SICARTSA's extension of useful lives is only based on the views of the plant manager, and not on any accounting events that would permit such extensions. In the final determination, the petitioners argue, the Department should reject the discretionary extensions of asset useful lives by SICARTSA's plant managers as distortive.

SICARTSA argues that the Department should not alter its reported depreciation costs. SICARTSA asserts that the petitioners have mis-characterized the nature of the activities that gave rise to its extension of useful lives. The useful lives were not extended as a result of ordinary maintenance and repair, SICARTSA contends, but rather because the assets underwent major re-working and overhauls. SICARTSA cites the cost verification report a page 11 and asserts that the Department's findings at verification support its contention.

SICARTSA argues that the petitioners have incorrectly focused on U.S. GAAP and IAS, and that Mexican GAAP is the relevant standard in this case. SICARTSA points out that under Mexican GAAP, when improvements change the useful lives of fixed assets future charges for depreciation are properly calculated using those modified lives.

SICARTSA disagrees with the petitioners' assumption that extending the useful lives of fixed assets results in the reduction of costs. SICARTSA maintains that the effect of extending useful lives could actually be the opposite because many assets that would have been fully depreciated before the POI are still being depreciated. SICARTSA argues that this obviously increases COP and CV.

The Department's Position:

We disagree with the petitioners that we should revise SICARTSA's reported costs upward to reflect the historical useful lives of fixed assets. Under section 773(f)(1)(A) of the Act, the Department is directed to calculate costs based on the normal records of a producer if those records are kept in accordance with the producer's home country GAAP and reasonably reflect the costs associated with the production and sale of the merchandise under consideration. SICARTSA calculated its reported costs using the depreciation expense recorded in its normal books and records. The calculation of this depreciation was based on the useful lives of fixed assets that were extended in accordance with Mexican GAAP. Contrary to the petitioners' argument, the extension of useful lives need not be in compliance with U.S. GAAP or IAS as Mexican GAAP is the relevant standard under the statute. It remains, therefore, for the Department to determine whether the depreciation calculated based on the extended useful lives is reasonable.

At verification we obtained information on each of SICARTSA's assets whose useful lives were extended during the two fiscal years related to the POI. Our testing of those assets showed that the extension of the useful lives was reasonable. For each asset tested, the extension of the asset's useful life was based on a *bona fide* accounting event such as a major re-working or overhaul that would have reasonably permitted such an extension. Therefore, based on the record of this case we find it inappropriate to adjust the depreciation costs from SICARTSA's normal books and records.

Comment 15: Loss on Physical Inventory

The petitioners argue that the Department should adjust SICARTSA's reported costs to account for the reserve for physical inventory losses noted in the cost verification report. The petitioners

cite *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8913 (February 23, 1998) (*SRAMs from Taiwan*) and assert that this is consistent with the Department's practice of including physical inventory losses in COP and CV.

SICARTSA argues that the Department should not adjust the reported costs to account for the reserve for physical inventory loss identified in the verification report as an accrued and unadjusted monthly reconciling item. The petitioners' citation to *SRAMs from Taiwan* is not pertinent, SICARTSA asserts, because in that case the loss in question was not a reserve but an actual cost reported as a non-operating expense. SICARTSA claims that the issue was not whether the actual cost should be included but whether it was more appropriately classified as G&A or financial expense.

The Department's Position:

We agree with the petitioners that the Department should adjust SICARTSA's reported costs to account for the loss on physical inventory. At verification, the Department noted a reconciling item for charges to a reserve for physical inventory losses that had not been included in the reported costs (*see* the cost verification report at page 14). We consider physical inventory losses to be related to the general activities of the company as a whole. *See SRAMs from Taiwan*. This is true regardless of whether the actual losses are charged directly against income or recorded through the use of a reserve account. Because it is the Department's established practice to calculate G&A expenses using the general operations of the company as a whole, we consider it appropriate to include SICARTSA's fiscal year charges to its reserve for physical inventory losses in the calculation of the G&A expense ratio. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from Japan*, 64 FR 30574, 30590 (June 8, 1999).

Comment 16: Liquid Steel Adjustment

The petitioners argue that the Department should reject SICARTSA's adjustment for liquid steel. According to the petitioners, this adjustment is not supported by the record. The petitioners contend that if the cost system initially assumed an average input of liquid steel, and the revised costs submitted prior to verification assumed actual input quantities, it would make sense that the reduction in the costs of certain products would be offset by an increase in the costs of other products.

SICARTSA argues that the Department should base its final determination on its verified liquid steel costs. SICARTSA refutes the petitioners contention that an offsetting increase in costs did not occur. According to SICARTSA, the decrease in the COM of certain grades of liquid steel is offset by increases in the COM of other grades. Moreover, SICARTSA maintains, if the rebar mill is taken into account, the entire decrease in the COM of certain grades of finished products is offset by increases in the COM of other grades of finished products. SICARTSA asserts that it explained this issue to the Department, and that the Department verified that its reported liquid steel costs and quantities were correct. Contrary to the petitioners claim, SICARTSA asserts, no

costs were excluded from the calculation of COM.

The Department's Position:

We disagree with the petitioners that the Department should reject SICARTSA's liquid steel costs. The Department verified that the revised costs submitted at verification were calculated using the actual quantities and values of liquid steel consumed in the production of different grades of billets as recorded in SICARTSA's production and cost accounting systems. Moreover, we noted that while the cost of some grades of billets decreased in relation to the prior COP and CV file, the decreases were offset by increases in the cost of other grades of billets, and that all liquid steel costs were properly accounted for. Thus, the record supports the conclusion that SICARTSA's liquid steel costs were properly recorded.

Recommendation

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination in the *Federal Register*.

AGREE____ DISAGREE____

Faryar Shirzad
Assistant Secretary
for Import Administration

Date